

AO 243 (Rev. 2/95)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District	
Name of Movant Steven Sable		Prisoner No. 28746-112	Case No. 04-CR-10365
Place of Confinement MCFP Springfield, P.O. Box 4000, Springfield, MO 65801-4000			
UNITED STATES OF AMERICA		V. Steven Sable <small>(name under which convicted)</small>	

MOTION

1. Name and location of court which entered the judgment of conviction under attack

2. Date of judgment of conviction

3. Length of sentence

4. Nature of offense involved (all counts)

5. What was your plea? (Check one)

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 U.S. DISTRICT COURT
 SPRINGFIELD, MO

(a) Not guilty ☐

(b) Guilty ☒

(c) Nolo contendere ☐

- If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

N/A

(a) Jury ☐

(b) Judge only ☐

7. Did you testify at the trial?

N/A

Yes ☐

No ☐

8. Did you appeal from the judgment of conviction?

N/A

Yes ☐

No ☒

AO 243 (Rev. 2/95)

9. If you did appeal, answer the following: N/A

(a) Name of court

(b) Result

(c) Date of result

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court N/A

(2) Nature of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result

(6) Date of result

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Name of proceeding

(3) Grounds raised

AO 243 (Rev. 2/95)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result

(6) Date of result

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒(2) Second petition, etc. Yes ☐ No ☒

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Former counsel of record Ms. Elizabeth Caddick Esq. filed a Petition for Compassionate Release to the BOP. -Denied on September 24, 2010. See Exhibit D

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

AO 243 (Rev. 2/95)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: PETITIONER WAS DENIED EFFECTIVE OF ASSISTANCE OF COUNSEL THATS GUARANTEED BY THE FIFTH, SIXTH, EIGHTH, FOURTEENTH CONSTITUTIONAL AMENDMENTS: Strickland v. Washington, 466 U.S. 688 (1984)

Supporting FACTS (state *briefly* without citing cases or law):

1. Petitioner contends he was denied effective assistance of counsel when counsel failed to argue for a downward departure based on Petitioner's health status or file a sentencing memorandum in opposition to the PSR report and/or the letter submitted to the court from the BOP, in violation of his Fifth, Sixth, Eighth and Fourteenth Constitutional Amendment Right:

See attached Memorandum of Law in Support

B. Ground two:

2. Petitioner contends that counsel was ineffective for his failure to show that the BOP treatment plan was deficient which violated his Fifth, Sixth, Eighth and Fourteenth Constitutional Amendment Right:

Supporting FACTS (state *briefly* without citing cases or law):

See attached Memorandum of Law in Support

C. Ground three:

3. Petitioner's asserts counsel failure to Procure/Expert Service

Supporting FACTS (state *briefly* without citing cases or law):

See attached Memorandum of Law in Support

JO 243 (Rev. 2/95)

D. Ground four:

4. Government Bureau of Prisons unable to meet Petitioner's medical needs although it plainly stated it could provide care in their letter of January 2010. They plainly mis-represented the levels of care Sable would receive while incarcerated.
Supporting FACTS (state *briefly* without citing cases or law):

See attached Memorandum of Law in Support

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

Petitioner was unaware of the "ineffective assistance of counsel" claims which warranted the filing of this collateral attack.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing
Elliot M. Weinstein Esq.
83 Atlantic Ave.
Boston, MA 02110
(b) At arraignment and plea

same

(c) At trial

N/A

(d) At sentencing

same

AO 243 (Rev. 2/95)

(e) On appeal N/A

(f) In any post-conviction proceeding

N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding

N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

N/A

(b) Give date and length of the above sentence:

N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐ N/A

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

11/18/10

DateS/R N/A

Signature of Movant